



Signed and Filed: February 18, 2011

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 09-30863 TEC
	)	
DAVID SALMA,	)	Chapter 7
	)	
	)	
Debtor.	)	
	)	
LEW JENKINS and LINDA JENKINS, as	)	Adv. Proc. No. 09-3126 TC
Trustee of the Jenkins Trust U/A/D	)	
1/15/98 and JACK H. FRESKOS,	)	
beneficiary of IRA 042640 at	)	
WESTAMERICA,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
DAVID SALMA, RUBEN Q. PICARDO,	)	
SEATTLE BLOCK, LLC, FATON BINAKU,	)	
and MARION ZABORSKI, and DOES 1-10,	)	
	)	
Defendants.	)	

**MEMORANDUM RE PLAINTIFFS': (1) MOTION FOR AMENDED JUDGMENT,  
NEW TRIAL, OR RELIEF FROM JUDGMENT; AND  
(2) MOTION TO STAY AWARD OF COSTS**

The court held a trial in this action on November 2-3, 2010, and entered judgment for Defendant David Salma ("Defendant") on November 15, 2010. On November 23, 2010, Plaintiffs filed the instant motion for amended judgment, new trial and relief from

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1 judgment, but did not set that motion for hearing. On November 24,  
2 2010, Defendant filed a bill of costs, requesting the Clerk to tax  
3 costs in the sum of \$3,210.95. On December 1, 2010, Plaintiffs'  
4 filed a Request to Stay Award of Costs, but did not set that  
5 request for hearing. Plaintiffs did not file an objection to the  
6 bill of costs. Upon due consideration, and for the reasons stated  
7 below, the court determines that a hearing would not be helpful,  
8 that the motion for amended judgment and the request to stay award  
9 of costs should be denied.

10 1. Motion for Amended Judgment, New Trial and Relief from Judgment

11 Plaintiffs contend that this court misconceived the standard  
12 for determining whether reliance is justifiable.

13 Plaintiffs first contend that in imposing upon them a duty of  
14 inquiry the court erred, because Plaintiffs had not received  
15 sufficient warning signs that the information at issue might not be  
16 correct. This argument is not persuasive. Plaintiffs received no  
17 information re rental income directly from Defendant. The only  
18 information provided by Defendant was incorporated into the  
19 appraisal report. That appraisal report contained a clear warning  
20 that the stated value was dependent upon future events and would be  
21 materially affected if those future events did not occur.

22 Plaintiffs next contend that this warning was inapplicable  
23 because they relied upon the "as-is" value stated in the appraisal  
24 report. This argument is unpersuasive, because the discussion of  
25 "as-is" value in the appraisal report reveals clearly that it was  
26 dependent upon the same contingent events as the prospective value.  
27 It was not justifiable for Plaintiffs to rely upon the "as-is"  
28 value without reading the text that explained what "as-is" value

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1 meant. Plaintiffs seek in substance to rely upon part of the  
2 appraisal while ignoring other parts.

3 Plaintiffs' third contention is that they were justified in  
4 relying upon Defendant's misrepresentations of the income from  
5 residential units, which was material and was not dependent upon  
6 future events. I simply cannot credit that Plaintiffs were  
7 justified in letting themselves be misled by a relatively small  
8 misrepresentation, when they ignored clear warning signs regarding  
9 a much more material misrepresentation.

10 Finally, Plaintiffs seek to reopen the case to supply new  
11 evidence regarding Defendant's intent to deceive. There is no  
12 purpose in taking such evidence if Plaintiffs cannot establish the  
13 requisite reliance.

14 2. Request to Stay Award of Costs

15 Defendant timely filed and served a bill of costs that  
16 separately states each item of taxable costs claimed and is  
17 supported by the required affidavit and documentation. Civ. L.R.  
18 54-1(a); B.L.R. 1001-2(a). Plaintiffs did not timely file an  
19 objection to the bill of costs. Civ. L.R. 54-2; B.L.R. 1001-2(a).  
20 The court has denied Plaintiffs' motion to amend the judgment.  
21 Accordingly, there is no basis to stay the Clerk's award of costs  
22 to Defendant, and Plaintiff's motion for stay of costs is denied.  
23 Civ. L.R. 54-4; B.L.R. 1001-2(a).

24 **\*\*END OF MEMORANDUM\*\***

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